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The Tax Tale Thickens

By Anthony Lewis

WASHINGTON, Dec. 19—The financial information released by President Nixon has raised one especially puzzling question among tax specialists. It relates to his $576,000 gift of papers allegedly made in March, 1969 and used thereafter as the basis for large tax deductions.

Mr. Nixon had given some papers to the Government earlier—on Dec. 30, 1968, it is thought—and was trying, by a second gift, to get additional tax benefits. Under the Tax Reform Act of 1969, which took effect on Jan. 1, 1970, anyone [illegible] for a gift of papers [illegible] to make a gift [illegible] March, 1969, is in trouble.

Professor George Cooper of Columbia Law School thinks the curious character of the 1969 gift [illegible] deliberate attempt to [illegible] Tax Reform Act. Through Congress the charges that the conduct may have involved "conscious deception" amounting to criminal tax evasion.

The Cooper thesis, as it has come to be known among some tax specialists, is obviously a most serious allegation. It [illegible] requires going through the details of the 1969 papers episode.

On March 26th, June 27th, 1969, boxes of Mr. Nixon's presidential papers arrived at the National Archives. No explanation was given for their delivery [illegible] except in an area reserved for "temporary storage" of officials' papers not [illegible] permanent collection.

On April 21, 1969, Edward L. Morgan, a White House counsel, signed a deed purporting to give a portion of those papers to the United States. Lawyers usually follow forms in preparing a second gift of similar property they would simply retype the first deed. The 1969 deed did mostly follow the one of Dec. 30, 1968, verbatim. But it entirely omitted one crucial paragraph of the earlier document, a clause calling for an official of the G.S.A. to sign and [illegible]

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What can explain the peculiarities of that deed? Professor Cooper says they must have been a response to the particular legislative situation in 1969.

From the beginning of that year, tax reform was a big issue. On April 21—the very day that Mr. Morgan signed the deed—President Nixon sent a tax reform message to Congress. Among other things, it called for change in a provision allowing taxpayers to deduct the full value of appreciated property given to charity. Other [illegible] property, though [illegible] the donor, was penalized.

The Senate, in passing its version of the tax bill, made the change [illegible] property retroactive to Jan. 1, 1969. The final version, which did not come out of a House-Senate conference until December, made the provision retroactive only to July 25, 1969.

In short, the President and his lawyers faced uncertainty about whether the deduction of gifts of property would be made retroactive to all or part of 1969. Professor Cooper suggests that they did not want to make a gift of papers and then find that they got no tax benefits—so they tried to keep their options open.

They delivered some papers to the Archivists in a way that made no commitments. They wrote a deed that had no place for a G.S.A. signature and thus could be kept secret, as it was.

If Congress made the reform retroactive to Jan. 1, 1969, then they could destroy the deed; Mr. Nixon would still own the papers and in due course could just send a truck to the Archives and pick them up. But if Congress picked a later effective date for the reform, as it did, he could produce the deed and say that a gift had been made before the deadline.

That is George Cooper's explanation of the mystery. If his suspicions are correct, if such a "scheme was afoot," he argues, "then a conscious deception was involved which seems clear criminal tax evasion." Legally, that conclusion would require evidence of intent, presumably testimony from one or more of those involved.

The Joint Congressional Committee on Internal Revenue Taxation, which is now making a thorough examination of the President's returns, may well want to question Mr. Morgan, Mr. De Marco about the [illegible] the 1969 deed. In any case, it is [illegible] committee that Professor Cooper [illegible] look when he says: "There is a [illegible] of tax conniving in the Nixon [illegible] that goes beyond ordinary avoidance and deserves to be investigated [illegible] willful evasion."